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C O N F I D E N T I A L SECTION 01 OF 02 BRATISLAVA 000281

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STATE FOR EUR/CE, INL/C

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SUBJECT: STEFAN HARABIN ELECTED CHAIRMAN OF THE SUPREME COURT

REF: BRATISLAVA XXX

CLASSIFIED BY: Keith A. Eddins, CDA, State.

REASON: 1.4 (b), (d)

11. Justice Minister Stefan Harabin was elected Chairman of the Supreme Court on June 22. He received 15 out of 17 votes from members of the Slovak Judicial Council. Seven members of the Council were either appointed by Harabin, or are subordinate to him. Two members abstained. Harabin, whose reputation for corruption, vengeance and deceit is well known, is thus poised to become the most powerful person in the Slovak Judiciary. Judges are appointed without term limits; the only body which can recall a judge is the Judicial Council, which Harabin will lead when he assumes his new duties. We are genuinely concerned that the many judges who have spoken out publicly against Harabin will be subject to retribution. We will monitor the situation closely and look for ways to support judges under fire for their efforts to promote and preserve rule of law in Slovakia.

12. Despite unprecedented public statements by respected judges about the dangers of a Harabin-lead Supreme Court, Justice Minister Stefan Harabin was elected Chairman of the Supreme Court and Judiciary Council on June 22. Fifteen members of the Judiciary Council voted for Harabin. His opponent, Supreme Court Judge Eva Babiakova - whom Harabin referred to as the "opposition's" candidate, even though her name was put forward by the Slovak Supreme Court - received no votes. Two judges abstained in the voting. We had heard from informed sources that one member of the judicial council who has a reputation for independence was afraid to vote against Harabin, because she was certain that any "no" vote would be attributed to her and she would be punished.

13. Concerns about the corrosive effect of Harabin's election led not only to a series of articles and op-eds by Slovak judges, but also to a first-ever collaboration between judges and NGOs. Together with representatives from NGOs Transparency International and Fair-Play Alliance, three judges held a press conference on June 17 to highlight their concerns about Harabin. Fair-Play Alliance launched an internet campaign called "Red (Card) for Harabin" that garnered over 9,000 signatures.

14. The reaction of Harabin and the Justice Ministry to the campaign was to denounce it as dishonest and a creation of the political opposition. The Justice Ministry spokesman called the NGO campaign a "totalitarian" tactic. As citizens signed their names to the online "Stop Harabin" campaign, Fair-Play Alliance forwarded their emails to all members of the Judicial Council. In response, the office of Justice Ministry State Secretary Hudak (a member of the Judicial Council who is close to Harabin) sent emails to all of the petitioners that read "Thank you for your vote. Stefan Harabin." While the Justice Ministry Spokesman claimed that these emails were sent "automatically, as a courtesy," Hudak's secretary acknowledged sending them.

15. Several recipients of the Harabin "thank you" notes contacted Fair-Play to express their unease that the Ministry

had their personal information. Their reaction is indicative of Harabin's reputation. During the June 22 vote, opponents of candidate Babiakova accused her of having missed work because of a drinking problem. Harabin again denied having contacts with Baki Sadiki, a suspected heroin trafficker. Per reftels, a transcript of a conversation between the two is incontrovertible proof to the contrary. He disputed charges that he has created an atmosphere of fear among the judiciary, saying "the only judges who have to worry are those who do not fulfill their responsibilities."

¶16. It is likely that Harabin's opponent, Judge Babiakova, will file a suit with the Constitutional Court (CC) claiming that the judges on the Judiciary Council who are subordinate to, or were appointed by Harabin (or HZDS), were biased because of conflict of interest. Another potential justification for a complaint could be the provision in the Slovak Constitution that states that a member of the government does not have the same rights as a judge, which suggests that this would exclude the right to be elected to this post. Only Supreme Court Judges are eligible to lead the court; Harabin argues that his judgeship was merely suspended during his tenure as Justice Minister,

¶17. Regardless of the merits of a potential complaint against Harabin's election, it is highly unlikely to prevail. We have learned from multiple reliable sources that the CC is divided into two camps: 7 justices who vote along Harabin lines, and 6 who retain some independence. This 7-6 split was apparent in the recent ruling against the Special Court. Equally, if not more important that the 7-6 divide, is the manner in which cases are apparently divided among 4 panels of the Constitutional Court. The Chairwoman of the Constitutional Court claims that the random electronic case assignment system applies only to the general courts, not to the Constitutional Court. Thus, she decides which cases go to which panels. Two

BRATISLAVA 00000281 002 OF 002

panels are reportedly led by Harabin allies; they are assigned the most "sensitive" or important cases.

¶19. One of the so-called independent judges on the CC, Laszlo Orosz, was subjected to threats, including an attempted poisoning of his wife, in the run-up to the ruling on the Special Court. His request to be recused from the vote on the Special Court was rejected by the Chairwoman who stated that if Orosz had really been threatened, he would have filed a criminal complaint. She ignored the fact that as the victim of the alleged poisoning, it was logically Mrs. Orosz who had filed a complaint. (Note: according to the attorney who represented the pro-Special Court argument before the CC, after two months Mrs. Orosz's criminal complaint has still not been acted on by the General Prosecutor's office.) We have heard that another judge who voted to preserve the Special Court, who had been subject to severe pressure to resign his post, will again be facing a campaign aimed at hastening his retirement.

¶10. Although action on the law that would bestow on Harabin unprecedented powers has been postponed, it now seems clear that the reasons were merely tactical, i.e., the thinking appears to have been that if Harabin's coup was not yet a fait accompli, wavering council members (if indeed there were any), might feel more comfortable voting for him. Over the weekend, HZDS party leader and Harabin supporter Vladimir Meciar, provided during a television interview his rationale for withdrawing the legislation until September: According to Meciar, it would be more appropriate for Harabin's successor to put forward legislation drafted by Harabin aimed at strengthening Harabin. (Comment: Indeed!)

¶11. If our conversations with members of Prime Minister Fico's Smer party are any indication, it's likely the legislation will pass in September. We heard from the head of Smer's youth wing that the legislation would be passed to preserve the coalition, but then repealed in a post-2010 government that will exclude HZDS. (Comment: we believe it will be very difficult, if not

impossible, to repeal this law, once passed.) According to the Dutch Ambassador, Ivan Sramko, the head of the Slovak National Bank, told him that PM Fico, while not overly fond of Harabin, respects him as a man who is powerful and "knows the system." Besides, according to Sramko, the quality of the judiciary is so low, that Harabin is viewed as the best choice.

¶12. Comment: While there are abundant problems in the Slovak Judiciary, there are capable, honest, and extraordinarily brave judges here. Sramko's comments are indicative of the deep cynicism that has taken hold of Slovak politics. Harabin has already stacked the judiciary with his cronies; he has destroyed the careers and lives of several good judges, and his growing sense of impunity was on full display in his recent extortionist letters to media outlets asking for compensation for unspecified coverage that damaged his reputation. Now, for at least the next five years, Harabin will wield unprecedented power in the judicial sector. His term will be five years, the legacy of damage will likely be measured in decades.

EDDINS